IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7374 OF 2005

Mr. Jehangir Dinshaw Irani .. Petitioner.

vs.

Mr. Abdul Hamid Jafari

& Ors. .. Respondents.

Mr. J.S. Kini for petitioner.

Mr. R.G. Ketkar for respondents.

CORAM : S.U. KAMDAR, J.

DATE : 1st December, 2005.

P.C.:

. The present petition challenges the order dated 6.4.2005 rejecting the application to bring the legal heirs of the original respondent no. 3 on record. The application is made without prejudice to the contentions of the respondent no. 3 that the deceased had left no legal heirs and representatives. However, the respondent herein has produced a registered will giving the names of the legal heirs and thus the application was moved for bringing the legal heirs on record which has been rejected by the impugned order.

2. It has been brought to my notice that the while making the application for bringing the legal heirs on record, averments are made challenging the said will. It goes without saying that the application for bringing the legal heirs on record cannot have any averments for challenging the will as the same is required to be challenged in appropriate court in appropriate proceedings. In that light of the matter, the learned counsel for the petitioner submits that he will not press all these averments which are made in the present application reserving his liberty to raise the said contentions in a regular testamentary proceedings as and when the same is initiated. Keeping the said issue open, I direct that the application to bring the legal heirs on record is granted. The impugned order dated 6.4.2005 is set aside. The legal heirs of the deceased respondent no. 3 are allowed to be brought on record without prejudice to the rights and contentions of the petitioner that the will is not valid. In view of the amendment being granted the petitioner will bring the legal heirs on record within a period of two weeks and the trial court is directed to proceed with the appeal after the legal heirs are brought on record in accordance with law. Petition disposed of accordingly. No order as to costs.